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You Better Work: The Decriminalizatin of Sex Work as a Transgender Woman of Color Rights Issue

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This research paper explores the various forms of oppression transwomen of color sex workers (TWCSW) face due to their unique life histories and demographic backgrounds, and argues that decriminalizing sex work is the best course of action to minimize the marginalization of TWCSW. Due to the large presence transwomen of color hold within the sex work community, as well as the diverse array of systemic risk factors which increase transgender women of color's likelihood of engaging in sex work (racism/colorism, transmisogyny, familial rejection, homelessness/imprisonment, school dropout, poverty, lack of alternative employment opportunities, limited access to alternative emotional support systems), sex work legislation disproportionately affects transwomen of color. Because TWCSW tend to work in poorer neighborhoods, suffer from higher rates of HIV infection, and face higher instances of sex worker-profiling, discrimination, abuse, and arrest, sex work legislation disproportionately harms TWCSW (compared to white/cisgender sex workers). While "harm reduction" tactics may be effective for other sex worker demographics, they are not enough to improve TWCSW's quality of life because TWCSW are more likely to distrust law enforcement, healthcare providers, and social services. Therefore, in order to effectively fight the oppression of transwomen of color (the demographic group hurt most frequently and severely by sex work legislation), sex work must be decriminalized. Decriminalization of sex work has proved effective in countries outside of the U.S., and is endorsed by Amnesty International as the best way to empower sex workers and increase their quality of life.

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It's common knowledge that sex sells. From scantily clad women licking their fingers in burger advertisements to the explosive success of the *Fifty Shades* franchise, sex is used seemingly everywhere to sell seemingly everything. Why, then, is it illegal to sell sex itself?

Though sex work is commonly referred to as "the world's oldest profession," this profession has not become more distinguished with age: the working conditions, social stigma, and legal rights of sex workers have actually worsened throughout the centuries. Ostracized by mainstream society, high-risk urban sex workers continue to lack access to adequate healthcare, housing, and protection from abuse at the hands of clients and the police. While sex workers are, collectively, a marginalized population, the oppression which sex workers face is graded and intersectional. The criminalization and stigmatization of sex work affects sex workers belonging to other marginalized groups most severely: transgender women of color sex workers (TWCSW) are especially at risk. While simultaneously battling transphobia, transmisogyny, and racism/colorism, TWCSW face especially grave working conditions, staggering HIV infection rates, and heightened risk for police brutality. Due to a culture that embraces and normalizes sex work, a scarcity of economic opportunities outside of sex work, and lack of social support outside of the sex worker sisterhood, transwomen of color are one of the most over-represented, disadvantaged, and sex-work dependent demographics of the sex work community.

Harm reduction tactics—the set of policies, procedures, and practices aimed at improving the safety and prosperity of sex workers—are often championed by sex worker rights activists as the means to resolve the dangers of sex work within the current legal framework. However, harm reduction tactics are typically ineffective when applied to transgender female sex workers, due to

their severe lack of resources and opportunity outside of sex work. Thus, the criminalization of sex work is a form of oppression that victimizes transgender women of color most severely, and must be reversed before harm-reduction tactics targeted at transgender female sex workers of color can be effective.

The criminalization of sex work is a targeted form of oppression towards transgender women of color (TWC) because TWC hold a large presence within the sex worker community. Transgender people engage in sex work at far higher rates than their cisgender counterparts: In 2011, the National Transgender Discrimination Survey found that 11% of trans* people have engaged in sex work, compared to 1% of cisgender women (the other major sex worker demographic group) (cited in Ford 2). Additionally, transgender youth in New York City are eight times as likely to engage in sex work as cisgender youth (cited in Ford 2). While the entire trans* community is oppressed by the criminalization of sex work, within the trans* community transgender women of color (TWC) are disproportionately burdened by sex work laws. According to a meta-analysis sponsored by the National Institute of Health, transgender women experience significantly higher rates of sex work than do transgender men (Hwang and Nuttbrock 3), and people of color make up the majority of transgender women sex workers in the United (4). A Chicago-based study and survey of the local transgender community found that a staggering 59% of young TWC had a history of sex work (cited in Wilson et al 2), a significantly higher prevalence of sex work than most, if not all, other demographic groups. Regardless of whether or not transgender people are more frequently abused and discriminated against within the sex worker community (as compared to cisgender people), it is clear that the transgender community is disproportionately affected by the dangers of sex work. Therefore, the

criminalization has a more targeted impact on the transgender community (and transgender people of color especially) than the white cisgender community.

There are a diverse array of systematic factors which increase transgender women of color's risk for engaging in sex work. According to the University of California's analysis of sex work risks, young TWC are particularly vulnerable to engaging in sex work due to transphobia, lack of employment opportunities elsewhere, familial rejection, imprisonment, homelessness, school dropout resulting from transphobic harassment (Wilson et al 3). Without employment or networking opportunities outside of the trade, many transgender TWC turn to sex work simply as a means of survival. TWC confront severe discrimination in the mainstream workplace due to their gender/racial identity (Nemoto, Operario, Keatley, Villegas 2). Racial minority transgender women are especially reliant on sex work because it is so difficult to find work outside of sex work: 61% reported difficulties finding mainstream employment (cited in Wilson et al 2). While some may argue that sex workers deserve the abuses and harassment they face because they are ultimately *choosing* to be criminals by engaging in an illegal profession, this perspective ignores the fact that many sex workers—*especially* transgender women of color—are unable to make the choice to engage in sex work freely. Due to extreme marginalization and lack of opportunity outside of sex work, many transgender women of color are not afforded the luxury of choosing between sex work and legal forms of employment; transwomen of color are often forced to choose between engaging in sex work and not having the means to survive. While the U.S. does not criminalize children trafficked into sex work because they cannot consent to sex work, transwomen are penalized for a somewhat comparable plight. While TWCSW are ultimately consenting adults with agency and autonomy who choose to be sex workers, they are unable to consent to engaging in sex work entirely freely. However, their marginalized position in white

supremacist, cis-hetero patriarchal society renders it impossible to separate a TWCSW's decision to engage in sex work with the social pressures which limit her options outside of sex work.

While people who are not transgender women of color sex workers may seem immune to the consequences of sex work criminalization, the plight of financially unstable TWCSW is felt beyond the TWCSW community. TWCSW who are too poor to afford proper housing often live on the streets—over 43% have a history of homelessness (Wilson et al 8). While many metropolitan areas are already overwhelmed by their homelessness population, the criminalization of sex work further contributes to the problem by subjecting sex workers to hefty fines, which undermines TWCSW's ability to pay for suitable housing. Thus, the burden of a TWCSW's cost of living (shelters, prisons, etc.) is passed on to taxpayers.

Transgender women are also at increased risk of engaging in sex work because it is embraced as a rite of passage within trans* female communities, rather than stigmatized as it is in mainstream society. According to a study spearheaded by Lydia Sausa and JoAnne Keatley, two transgender female researchers from the University of California San Francisco, sex work is accepted as a cultural norm within the greater transgender women community and is viewed as a means for young transgender women to gain social support and mentorship of more experienced transgender women (Sausa, Keatley, and Operario 770). The opportunity to befriend and gain mentorship from a more "seasoned" transgender woman is too lucrative an opportunity for many young transgender women to pass up; the sisterhood of transgender sex workers fills the void left by unsupportive and abusive families. Therefore, the large proportion of transgender women who face lack of support and guidance from friends and family are especially vulnerable to engaging in sex work, because sex work allows them to fulfill both financial and personal development goals.

Transgender women are disproportionately drawn to sex work because it can also be a highly emotionally rewarding and validating experience. The University of California sex work risk assessment found that transgender women frequently engage in sex work due to the need for gender validation, community support, and transgender-specific financial needs (such as gender-transitioning medical treatment) (Wilson et al 3). The attention and affection male clients show trans* female sex workers is rare elsewhere, and through penetrative sex, transgender women feel their gender identity is validated (3). Trans* female sex workers especially relish the feeling of being desired since their identity is so stigmatized by mainstream society. Additionally, gender-affirming surgeries are expensive procedures which would be out of reach for many transgender women if it was not for sex work. Many transgender women hustle to pay for breast augmentation, facial reconstruction, and other procedures to look more "passable," or looking naturally feminine enough to be accepted as cisgender (3). However, the expense of these procedures causes transgender women to become more and more reliant on sex work as a source of income. Because transwomen of color have special financial, social, and emotional needs (such as transition surgeries, mentorship, and gender validation) which are satisfied through sex work, transgender women of color are far more vulnerable to become dependent on sex work and bear the consequences of criminalization than cisgender white people.

Transgender women of color are not only more likely to engage in sex work, but are subject to greater occupational hazards when doing so. TWCSW experience greater incidences of victimization at the hands of law enforcement, poorer working conditions, and increased HIV risk than their cisgender and white peers. This "triple jeopardy" of being transgender, a person of color, and a sex worker makes the lives of TWCSW extraordinarily dangerous.

The perilous nature of transgender sex worker-police tensions is of global concern: the World Health Organization (WHO) notes that "In settings where sex work is illegal, transgender sex workers often bear the brunt of police brutality and, when complaints against police brutality are lodged, they are often ignored" (cited in Ford 2). One of the major threats the criminalization of sex work poses to TWCSW is harassment from law enforcement. TWCSW are frequently profiled and abused by police due to their marginalized racial and gender identities. These aggressive and discriminatory police practices disproportionately burden TWCSW, and do nothing but intensify the harmful effects that the criminalization of sex work has on transgender women of color sex workers.

In a 2008 review of state of affairs between sex workers and the police force in Washington DC, it was found that heightened criminalization of sex work, including the introduction of "prostitution free zones" (PFZs) appeared to only exacerbate tensions between police and sex workers. While 75% of sex workers surveyed were dissatisfied with police interactions, trans* sex workers were significantly more likely than their cisgender counterparts to be dissatisfied with police interactions and characterize them as discriminatory (Move Along 55). Trans* sex workers of color reported greater fear towards police interactions than any other group. A third of trans* respondents reported fear of violence (compared to 26.5% overall) and 60% of Latinx respondents reported fear of deportation and arrest (44). These fears are not baseless—police interactions were overwhelmingly marred by accounts of profiling, victim blaming, sexual harassment, physical abuse, insults, detainment, strip search, confiscation/destruction of safe sex materials (condoms), humiliation, ethnic discrimination, and demands for sexual favors (56). In fact, almost 1 in 5 respondents reported that they had been approached by police officers who demanded sexual favors in exchange for not arresting them

(53). Trans* people were significantly more likely to be harassed, frisked, and profiled as sex workers than cisgender people (45). Thus, TWCSW are at heightened risk for fines, jail time, exploitation, abuse, and even STDs (due to confiscation of condoms) than their white, cis* counterparts. The criminalization of sex work therefore disproportionately affects the health, safety, and financial stability of transgender women of color than any other demographic group. As long as sex work remains illegal, law enforcement will be free to perpetuate the cycle of marginalization and exploitation of transwomen of color through discriminatory policing tactics.

The harassment transgender women of color sex works face from police not only threaten their safety, but the safety of the community. Countless hours and tax dollars are spent by police stations to patrol known prostitution hotspots and detain, arrest, and imprison sex workers. This process is entirely ineffective towards deterring sex work because sex work is their job; over 52% of sex workers have been imprisoned, yet after release they return to sex work as if nothing happened and the cycle continues (Wilson et al 8). The officers' time and taxpayers' money would be much more wisely spent on arresting and imprisoning violent offenders—real threats to the community—rather than peaceful sex workers.

When transgender women of color sex workers are not worrying about police brutality, they must worry about navigating poorer, more dangerous working conditions than their white counterparts. A 2004 study by Hwang and Nuttbrock examined three ethno-culturally distinct communities (Black/Latina, Asian/Pacific Islander (API) , and white) and found that "racial stratification was… the central organizing principle that determined the relative position of these communities" (18). The Black/Latina members of the House Ball community engaged in dangerous, street- based survival sex work and were at greatest risk for rape, drug use, assault, and unprotected sex (9). The API community also engaged in survival sex work, but often

worked from hotel rooms and solicited at clubs or online (11). This allowed API sex workers to screen clients more extensively, have more power in condom negotiations, and charge higher rates than House Ball members. While both TWCSW communities relied on sex work for survival, white sex workers frequently enjoyed job and economic security by working traditional middle-class by day. White sex work was more often than not recreational rather than for survival, allowing them the greatest condom negotiation power and heightened safety (14). Overall, TWCSW tend to experience more stigma and oppression than other sex workers (Sausa, Keatley, and Operario 768). While not all white sex workers experience the same privilege and mobility as the population studied, there is a clear negative correlation between the level of marginalization of a racial group and the safety and working conditions of its sex workers. While this study was limited to three contrasting ethnocultural communities, it illustrates a strong divide between the generally safer working conditions of white transgender women and the poorer, more dangerous working conditions of transgender women of color. Thus, it demonstrates why transgender women of color (not simply transgender women in general) are not only the most significant sex worker demographic group, but most marginalized by the criminalization of sex work.

Transgender women of color sex workers not only experience immediate, on-the-job risks from police and client interactions but also long term health risks from unprotected sex and injection drug use. While the majority of TWCSW understand the benefits of condom use and the risks of unprotected sex, actual condom use wavers depending on the current financial situation of the sex worker (Wilson et al 3). TWCSW's ability to negotiate condom use is often compromised when a client offers more money for unprotected sex, and she is in dire financial circumstances due to factors such as gender affirming surgery payments and housing. TWCSW

also experience high rates of injection drug use due to work related stress and pressure from clients (2). Due to reduced condom negotiating power and increased injection drug use, transgender women of color experience significantly higher rates of HIV infection than do transgender men and white sex workers (Hwang and Nuttbrock 3-4): globally, HIV prevalence was 27.3% in trans* female sex workers, 14.7% in transgender women not engaging in sex work, 15.1% in male sex workers, and 4.5% in female sex workers (Operario, Soma, Underhill 1).

The health and safety of transwomen of color sex workers is a public health concern. The high prevalence of HIV in TWCSW coupled with the large volume of unprotected sex between TWCSW and clients poses a significant threat to public health. TWCSW can infect clients (and vice versa) through unprotected sex, and then the client can spread the infection to the outside community when he has unprotected sex with another partner. Thus, an unprotected sexual encounter with an HIV+ TWCSW and a client can lead to the infection of a much larger network of people. Additionally, when TWCSW have health concerns regarding HIV or abuse at the hands of police or clients, many turn to emergency rooms due to lack of health insurance (Nemoto et al 1). When TWCSW are unable to pay for care and have non-urgent care needs, they contribute to high hospitalization costs (since other patients now bear the responsibility of absorbing the cost of care of TWCSW) and longer emergency room wait times.

Most academics argue that harm-reduction tactics are the solution to sex workers' problems. However, this perspective ignores the fact that harm-reduction is not a feasible solution for TWCSW's issues due to lack of resources and trust in existing institutions.

Many researchers suggest that increasing resources for sex workers (through access to free condoms and outreach programs) will mitigate occupational hazards such as HIV infection (Move Along 3, Rekart 2127, Sausa, Keatley, and Operario 768). However, increased access to

condoms would likely be only marginally beneficial to TWCSWs because their ability to negotiate condom use is often compromised by their financial situation (Wilson et al 3): when a client offers more money for unprotected sex, it is difficult for a TWCSW to decline when she is in dire financial circumstances. Even if every TWCSW was equipped with a sufficient quantity of condoms, it would not necessarily mean that the condom would be used and HIV infection would be prevented.

The benefits of preventative education are often touted by sex work researchers (Nemoto et al 384, Rekart 2125), though this method is demonstrated to be ineffective in transwomen communities. A study conducted by the Transgender Resources and Neighborhood Space (TRANS), a program/ community center housed in San Francisco's Tenderloin district, found that even extensive educational workshops regarding HIV, sex, drug use, and transgender mental health did not result in significant changes in risky behavior in transgender women (Nemoto et al 383). The program yielded only marginal reductions in unprotected anal sex and alcohol abuse, and no changes in illicit drug use or HIV knowledge (383). Educational programs would be an inefficient use of resources with minimal benefits.

Some researchers believe that simply "empowering" TWCSWs would reduce occupational hazards. (Rekart 2126). However, this solution does not serve the trans* community because many TWCSWs primarily find empowerment through their sex work. Transgender women frequently engage in sex work due to the need for gender validation, community support, and transgender-specific financial needs (such as gender-transitioning medical treatment) (Wilson et al 3). Additionally, drug use and prostitution are accepted as rites of passage within the transgender community (Wilson et al 8). Sex work is already intrinsically

empowering for many TWCSW, so the idea of "empowering" sex workers as a means to discourage sex work is self-contradictory when applied to transwomen communities.

Increasing healthcare resources is a popular solution for the health risks of sex work (Rekart 2128, Wilson et al 11, Sausa, Keatley, and Operario 768), even though healthcare resources are consistently underused by TWCSW. A significant barrier to the efficacy of TWCSW health outreach programs is that TWCSW simply do not trust law enforcement or healthcare/service providers (Nemoto et al 383). TWCSW often do not access social and medical services due to distrust and fear of deportation and arrest (Hwang and Nuttbrock 13), and many medical facilities simply do not know how to properly care for transwomen and sex workers (Amnesty International 13). Thus, expanding healthcare for TWCSW under the current legal framework would be ineffective.

The implementation of harm-reduction principals is so ineffective on their own that even harm-reduction advocate Michael Rekark admits that "criminalization leads to violence, police harassment, increased HIV and STI risk, reduced access to services, psychological disease, drug use, poor self-esteem, loss of family and friends, work-related mortality" (Rekart 2124). The criminalization of sex work is the greatest inhibitor of the efficacy of harm-reduction tactics. Fortunately, progressive countries such as New Zealand have already decriminalized sex work and demonstrated the effectiveness of decriminalization towards improving quality of life of sex workers.

In 2003, New Zealand passed The Prostitution Reform Act (PRA) which decriminalized sex work and acknowledged it as a legitimate form of service work (Abel 581). Under the PRA, sex workers are afforded the same legal and employment rights as any other occupational group (581). They are protected from coercive management practices (bribes, threats, etc.) and given

legal power to press charges against police, brothel management, and clients who violate their rights (585). By promising sex workers greater access to justice, sex workers are empowered to make more empowered choices regarding who they see, what conditions they work under, and what services they provide. After the PRA was passed, the percentage of brothel workers able to refuse a client without management interference rose from 47% to 68% (585). The PRA also gives sex workers greater authority and success while negotiating condom use by requiring the use of protection by law—it is a "one-sentence statement now, no longer a 10 minute argument" one sex worker remarks (586). By developing sex work policy through a human rights and health focused campaign spearheaded by researchers and individual sex workers themselves, sex workers experienced unprecedented levels of health, safety, and prosperity. It is not unreasonable to expect similar results if comparable policies were implemented on the global scale.

Fortunately, the campaign for the global decriminalization of sex work is well under way. On July 7, 2015, Amnesty International (AI) drafted a resolution recommending the international decriminalization of sex work. In preparation for drafting the resolution, AI researched the state of sex work in high, middle, and low income countries across the globe: Argentina, Hong Kong, Norway, and Papua New Guinea. The research committee found that the criminalization of sex work "compounds stigma and discrimination against sex workers…gives police impunity to abuse sex workers and acts as a major barrier to police protection for sex workers" and that "the most marginalized sex workers often report the highest levels, and worst experiences, of criminalization" (Amnesty International 12-15). The council concludes that the criminalization of sex work actively disempowers sex workers, encourages the human rights abuses against them, compromises sex workers' safety, and exacerbates the oppression and discrimination sex workers belonging to other marginalized groups already face (8). In response to these findings,

the International Board states that "the starting point of preventing and redressing human rights violations against sex workers, and in particular the need for states to now only review and repeal laws…but also refrain from enacting such laws" (4). Only after decriminalization is achieved can harm reduction tactics and human-rights centered sex work policy be effective (4). Following decriminalization, Amnesty International encourages nations to develop policies in conjunction with sex workers which aim to eliminate stigma and discrimination, protect sex workers' safety, ensure fair working conditions, and remove barriers to employment outside of sex work so that people (especially those belonging to marginalized populations) can enter and leave sex work freely (11). As the world's premier human rights organization states, the global criminalization of sex work is an offense against sex workers' human rights. Current sex work laws antagonize police-sex worker relations, prohibit sex workers from taking crucial safety precautions (such working in a secured environment), restrict sex workers' access to adequate healthcare and housing, and encourage stigma and discrimination. Thus, before any government or activist group can effectively protect sex workers' workplace or healthcare rights, the legal status of sex work must first be addressed. Decriminalization of sex work is the first step toward a safe, dignified, financially secure profession for all sex workers, but especially TWCSW who are particularly disempowered by the criminal status of sex work.

As Amnesty International so incisively remarks,

> "Systems of oppression such as gender discrimination, racism, socio-economic inequality and legacies of colonial occupation, deny people power and lead to poverty and deprivation of opportunity. Groups most at risk of discrimination and oppression are frequently over represented in sex work...[and] often report the

highest levels, and worst experiences, of criminalization"" (Amnesty International 7, 15).

This observation clearly translates to the transgender woman of color community. A large body of research conducted over the past decade echoes this sentiment and reveals that transgender women of color are exceedingly vulnerable to entering sex work, depending on sex work for survival, and experiencing dangerous working conditions than any other demographic group. As mounting evidence suggests, transgender woman sex workers of color are most severely disadvantaged by the criminalization of sex work and have the most to gain from legalizing sex work. While many academics propose prevention and outreach initiatives to decrease the vulnerability of sex workers, these 'solutions to the sex work problem' do little to help the majority of sex workers. TWCSW are unlikely to access these resources due to cultural and economic pressures to engage in sex work and fear of arrest/deportation. Sex work must be decriminalized before social initiatives designed to protect sex workers' rights can be effective. Using the guidelines delineated by Amnesty International and the precedent set by New Zealand, the decriminalization of sex work can lead to the increased safety and prosperity of TWCSW across the U.S. Repealing, revising, and modernizing U.S sex laws would not only dismantle a significant form of oppression towards TWCSW, but help lift the stigma towards the entire transgender woman of color community.

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